

United States District Court

EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

CRAIG CUNNINGHAM

v.

JAY POLITI, ET AL.

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Civil Action No. 4:18-CV-362

(Judge Mazzant/Judge Nowak)

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the Magistrate Judge pursuant to 28 U.S.C. § 636. On April 30, 2019, the report of the Magistrate Judge (Dkt. #84) was entered containing proposed findings of fact and recommendations that Defendant Americo Financial Life & Annuity Company's ("Americo") Motion to Dismiss Plaintiff's Amended Complaint (Dkt. #51) be granted in part and denied in part.

Having received the report of the United States Magistrate Judge, and no objections thereto having been timely filed, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and adopts the Magistrate Judge's report as the findings and conclusions of the Court.

It is, therefore, ORDERED that Americo's Motion to Dismiss Plaintiff's Amended Complaint (Dkt. #51) is GRANTED IN PART AND DENIED IN PART. Plaintiff's claims against Americo under section 227(c) and for direct liability under section 227(b) of the (federal) TCPA are hereby DISMISSED WITH PREJUDICE. Plaintiff's claims pursuant to section 227(b) of the TCPA under theories of vicarious liability and Plaintiff's claim under section 305.053 of the Texas Business and Commerce Code remain.

IT IS SO ORDERED.

SIGNED this 19th day of June, 2019.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE